

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.283 OF 2005

Pramod Akaram Shinde ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

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Mr.Aslam S.Shaikh for Petitioner.

Mr.B.H.Mehta, A.P.P. for Respondents.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 22, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Mirza, waives notice for Respondents.

3. As short question is involved, the matter is taken up for final hearing forthwith, by consent.

4. This Petition takes exception to the order passed by the Deputy Inspector General of Prisons, Western Division dated 11th September 2004, rejecting the Petitioner's Application for release on furlough leave. Three grounds have been mentioned in the order which is impugned before this Court. The first ground is that the mother of the Petitioner is not willing to stand surety for the Petitioner. The second ground is that brother of the Petitioner is a criminal and is absconding. The third ground is that if the Petitioner is released on furlough leave, he may indulge in some crime.

5. The Petitioner is undergoing sentence in connection with offence punishable under Section 302 of the Indian Penal Code since 12th July 1994. The Petitioner has not been released on furlough leave so far, although he had made application in that behalf in the past.

6. We are concerned with three grounds specified in the order which is impugned before

this Court. Insofar as the first two grounds are concerned, according to the Petitioner, the same are unfounded and in fact, contrary to the materials on record. Whereas, insofar as the third ground is concerned, it is submitted that there is nothing on record to support the stand of the State in that behalf, inasmuch as the conduct of the Petitioner while in jail has been satisfactory and unblemished.

7. The Petitioner is in jail for last ten years and has never been released on furlough leave. It would have been different matter if in the past, when the Petitioner was released on furlough or parole leave, the Petitioner had indulged in any crime. That is not the case on hand. On the above arguments, it is submitted that the order cannot stand the test of judicial scrutiny.

8. Having considered the rival submissions and perused the record, it is seen that the first ground that the Petitioner's mother is not willing to stand as surety as stated in the order is

contradicted by the affidavit of the Petitioner's mother, which has been placed on record expressing willingness to stand as surety for the Petitioner. In other words, the first ground stated in the impugned order is unsubstantiated.

9. To get over this position, learned A.P.P. had relied on the second ground that the brother of the Petitioner has criminal record. It was also argued that the brother of the Petitioner has jumped bail and was absconding. Once again, this argument is contradicted by the material on record placed before this Court. The Petitioner has produced zerox copy of the diary maintained by the Petitioner's brother for having attended the concerned Police Station. In Para 13 of the Writ Petition, clear assertion has been made that the ground is baseless and false and Petitioner's brother is not absconding, but regularly attending the concerned Police Station. This assertion has remained uncontroverted and in fact, is substantiated by document at Exhibit 'B'. Viewed in this perspective, the ground that Petitioner's brother is absconding, cannot be accepted. In

other words, it is seen that the ground stated in the impugned order are casual observations made by the concerned Authority without confirming the correct position. This approach cannot be accepted.

10. Even the argument of learned A.P.P. that the surety of the Petitioner's mother ought not to be accepted, on the reasoning that she was surety also for her other son, who is Petitioner's brother, will fall to the ground on the finding that the Petitioner's brother, it is seen, has been attending the concerned Police Station regularly as is stated in Paragraph 13 of the Writ Petition.

11. The last ground which has weighed with the Authority is that if the Petitioner is released on furlough leave, he is likely to indulge in some crime. This ground once again is unsubstantiable. There is nothing on record to even remotely suggest this, except the statement made in the report or the impugned decision in this behalf. On the other hand, the conduct of the Petitioner while in jail, has been satisfactory. The Petitioner has not

availed of furlough or parole leave in the past. There is no basis to assume that if the Petitioner is released, he will indulge in similar offence. The observation so made, therefore, cannot be sustained.

12. To get over this position, learned A.P.P. relied on the assertions made in Para 3 of the reply affidavit that if the Petitioner is released on furlough leave, there is danger to the prosecution witnesses who deposed against the Petitioner. In the first place, as mentioned earlier, there is no record to support this position. Moreover, this was not the ground of rejection of the furlough leave. Assuming that such apprehension is entertained by the Authority as stated in the reply affidavit, for the first time, and if there is material to support that position, in such a case, the Authority can impose appropriate condition, so as to ensure that prosecution witnesses are not exposed to the threat or possible danger on account of release of the Petitioner on furlough leave.

13. Taking overall view of the matter, the order which is impugned in this Petition, cannot be sustained. The same is therefore set-aside. Instead, the Application preferred by the Petitioner for being released on furlough leave is allowed. The competent Authority may release the Petitioner on furlough leave as per the rules, on imposing such conditions, as may be warranted.

14. Rule made absolute on the above terms.

15. Petition disposed of accordingly.

A.M.KHANWILKAR, J.